

AMENDED IN SENATE APRIL 21, 2010

AMENDED IN SENATE MARCH 23, 2010

SENATE BILL

No. 1119

Introduced by Senator Wright
(Coauthors: Senators Alquist and Negrete McLeod)

February 17, 2010

An act to amend Sections 1812.540, 1812.542, 1812.543, and 1812.544 of, *and to add Section 1812.545 to*, the Civil Code, relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

SB 1119, as amended, Wright. Health care staffing.

The Employment Agency, Employment Counseling, and Job Listing Services Act, the violation of which is a misdemeanor, regulates the business of employment agencies, including nurses' registries, as defined. Existing law requires an employment agency that refers temporary licensed nursing staff, as defined, to an employer who is a licensed long-term health care facility, as defined, to provide the employer with (1) written verification that the person is in good standing with the Board of Registered Nursing or Board of Vocational Nursing and Psychiatric Technicians, as applicable, and has successfully secured a criminal record clearance, (2) the individual's professional license and registration number and date of expiration, (3) a statement that the person has had a health examination, as specified, and (4) written verification that the individual referred does not have any unresolved allegations against him or her involving mistreatment, neglect, or abuse of a patient, as specified. Existing law also requires these agencies to adopt policies and procedures regarding prevention of resident or patient abuse by temporary staff.

This bill would impose those requirements on an employment agency that refers temporary licensed nursing staff to any health facility, as defined. *The bill would require an employment agency that refers licensed nursing staff for temporary employment in a health facility to be certified or accredited by the Joint Commission or an accrediting body recognized by the federal Centers for Medicare and Medicaid Services.*

Existing law requires an employer to report to the board the suspension or termination for cause of any licensed vocational nurse or psychiatric technician in its employ.

This bill would require an employment agency to report to the board the suspension or termination for cause by a health facility of a licensed vocational nurse or psychiatric technician referred to the facility by the agency. The bill would also require a health facility that refuses to accept a placement of a licensed nursing staff or certified nurse assistant from an employment agency to inform the agency of its reasons and of any action that may constitute grounds for reporting of the person's termination or suspension for cause. The bill would also make conforming changes.

Because this bill would establish additional requirements under the act, the violation of which would be a misdemeanor, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1812.540 of the Civil Code is amended
- 2 to read:
- 3 1812.540. For purposes of this chapter, the following
- 4 definitions shall apply:
- 5 (a) "Direct care service" means the temporary assignment of
- 6 certified nurse assistants to render basic care services directed at
- 7 the safety, comfort, personal hygiene, or protection of a patient
- 8 who is a resident of a long-term health care facility.

1 (b) “Nursing service” means the temporary assignment of a
2 licensed registered nurse, licensed vocational nurse, or psychiatric
3 technician to render nursing and basic care services to one or more
4 patients at a health facility.

5 (c) “Licensed nursing staff” means a licensed registered nurse,
6 licensed vocational nurse, or psychiatric technician.

7 (d) “Long-term health care facility” means a licensed facility,
8 as defined in Section 1418 of the Health and Safety Code.

9 (e) “Health facility” means a licensed facility, as defined in
10 Section 1250 of the Health and Safety Code.

11 SEC. 2. Section 1812.542 of the Civil Code is amended to
12 read:

13 1812.542. Every employment agency that refers temporary
14 licensed nursing staff to an employer who is a licensed health
15 facility shall provide the employer with all of the following:

16 (a) Written verification that the individual is in good standing
17 with the Board of Registered Nursing or the Board of Vocational
18 Nursing and Psychiatric Technicians, as applicable, and has
19 successfully secured a criminal record clearance. The employment
20 agency shall provide to the employer the individual’s professional
21 license and registration number and date of expiration.

22 (b) A statement that the licensed nursing staff person has had a
23 health examination within 90 days prior to employment with the
24 employment agency or seven days after employment with the
25 employment agency and at least annually thereafter by a person
26 lawfully authorized to perform that procedure. Each examination
27 shall include a medical history and physical evaluation. The
28 employment agency shall also provide verification that the
29 individual has had tuberculosis screening within 90 days prior to
30 employment and annually thereafter.

31 SEC. 3. Section 1812.543 of the Civil Code is amended to
32 read:

33 1812.543. (a) An employment agency that makes referrals of
34 licensed nursing staff for temporary employment in a health
35 facility, or certified nurse assistants for temporary employment in
36 a long-term health care facility shall adopt policies and procedures
37 regarding prevention of resident or patient abuse by temporary
38 staff.

39 (b) The employment agency shall provide written verification
40 to the long-term health care facility or health facility that any

1 certified nurse assistants or licensed nursing staff, respectively,
2 referred by the agency do not have any unresolved allegations
3 against them involving the mistreatment, neglect, or abuse of a
4 patient, including injuries of unknown source and misappropriation
5 of resident property.

6 (c) No temporary staff person referred by an employment agency
7 may be solely responsible for a unit unless that person has received
8 a full orientation to the facility and the applicable unit for which
9 he or she is assigned.

10 (d) Upon the request of the State Department of Health Services,
11 an employment agency shall provide a list of temporary employees
12 who have been referred to a specified facility during the period in
13 which the facility is involved in a labor action.

14 (e) An employment agency shall require that any employee
15 referred to a ~~health~~ long-term care facility be identified as a
16 temporary staff person in the facility's daily staffing levels required
17 to be posted in accordance with the standards set forth in Section
18 941 of Appendix F of Public Law 106-554 (42 U.S.C. Sec.
19 1395i-3(b)(8) and 42 U.S.C. Sec. 1395r(b)(8)).

20 SEC. 4. Section 1812.544 of the Civil Code is amended to
21 read:

22 1812.544. (a) Every employment agency that makes referrals
23 of licensed nursing staff for temporary employment in a health
24 facility or certified nurse assistants for temporary employment in
25 a long-term health care facility shall maintain a record of all
26 advertisements, showing the date of publication and the publication
27 in which the advertisement appeared, for a period of one year from
28 the date of the advertisement.

29 (b) No employment agency that makes referrals for employment
30 to a health facility shall, by its name, advertisement, or any other
31 representation, represent itself to be a home health agency, as
32 defined by subdivision (a) of Section 1727 of the Health and Safety
33 Code, or to perform the services of a home health agency. The
34 employment agency shall provide a written disclosure to each
35 employer stating that it does not perform the services of a home
36 health agency and clearly describing that it is an employment
37 agency only.

38 (c) Any facility or individual may refer complaints concerning
39 employment agencies which place licensed nursing staff in health
40 facilities or certified nurse assistants in long-term health care

1 facilities to the appropriate licensing, certification, ombudsman,
2 adult protective services, or proper law enforcement agency for
3 action.

4 *SEC. 5. Section 1812.545 is added to the Civil Code, to read:*

5 *1812.545. (a) An employment agency that refers licensed*
6 *nursing staff for temporary employment in a health facility shall*
7 *be certified or accredited by the Joint Commission or an*
8 *accrediting body recognized by the federal Centers for Medicare*
9 *and Medicaid Services.*

10 *(b) An employment agency that refers licensed nursing staff for*
11 *temporary employment in a health facility shall have the same*
12 *duty to report the suspension or termination for cause of any*
13 *licensed vocational nurse or licensed psychiatric technician as an*
14 *employer pursuant to subdivision (b) of Section 2878.1 or*
15 *subdivision (b) of Section 4521.2, respectively, of the Business and*
16 *Professions Code.*

17 *(c) A health facility that receives referrals of licensed nursing*
18 *staff or certified nurse assistants from an employment agency that*
19 *sends back to the agency a licensed nurse staff person or certified*
20 *nurse assistant, or refuses placement from the agency of a licensed*
21 *nurse or a certified nurse assistant, shall inform the agency of its*
22 *reasons for doing so and of any action that may constitute grounds*
23 *for reporting pursuant to subdivision (b).*

24 *SEC. 5. No reimbursement is required by this act pursuant to*
25 *Section 6 of Article XIII B of the California Constitution because*
26 *the only costs that may be incurred by a local agency or school*
27 *district will be incurred because this act creates a new crime or*
28 *infraction, eliminates a crime or infraction, or changes the penalty*
29 *for a crime or infraction, within the meaning of Section 17556 of*
30 *the Government Code, or changes the definition of a crime within*
31 *the meaning of Section 6 of Article XIII B of the California*
32 *Constitution.*